



2. Orcutt filed his original answer on April 29, 2011. On July 22, 2011, the Fifth Circuit withdrew its opinion regarding whether the Receiver must litigate the Stanford Employee Claims in arbitration, and held that it did not have jurisdiction to rule on the motions to compel arbitration. On August 26, 2011, this Court denied the pending motions to compel arbitration. Shortly thereafter, certain former Stanford employees appealed that ruling to the Fifth Circuit. The Fifth Circuit has not yet ruled on the appeal.

3. Orcutt seeks leave to amend his answer to add additional facts to his affirmative defense of fraud, clarify his twelfth affirmative defense, and assert two counterclaims. A copy of Defendant John Orcutt's First Amended Answer to Receiver's Second Amended Complaint Against Former Stanford Employees and Counterclaim is attached hereto as Exhibit A.

#### **ARGUMENT AND AUTHORITIES**

4. Federal Rule of Civil Procedure 15(a) provides that a party may amend its pleadings by leave of court and that leave should be freely granted when justice so requires. Orcutt's amendment of his answer will not prejudice the Receiver. This case is still in the very preliminary phase. No discovery has been taken. Orcutt's amended pleading will have no effect on the pending appeal in the Fifth Circuit or this Court's ability to rule on any pending motions regarding other Stanford Employee Defendants.

5. Moreover, allowing this amendment does not preclude the Receiver from asserting any legal or factual challenges to Orcutt's amended answer and counterclaim. If the Receiver has any motions it would like to assert against Orcutt's amended answer and counterclaim, it will have ample opportunity to do so after the Court grants Orcutt's motion for leave to file it. Justice will be served under Rule 15(a) by allowing Orcutt leave to file his amended answer and counterclaim.

**PRAYER**

**WHEREFORE**, Orcutt prays that this Court issue its order granting Orcutt leave to file his First Amended Answer to Receiver's Second Amended Complaint Against Former Stanford Employees and Counterclaim and for such other relief, legal and equitable, to which he may show himself justly entitled.

Respectfully submitted,

/s/ Carolyn R. Raines

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**CERTIFICATE OF CONFERENCE**

On September 25, 2012, I conferred with David Arlington, counsel for Plaintiff, who informed me that the Receiver is opposed to this motion.

/s/ Carolyn R. Raines

Carolyn R. Raines

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to the Federal Rules of Civil Procedure, a true and correct copy of the above and foregoing document was served via ECF on counsel of record on this the 26<sup>th</sup> day of September, 2012.

/s/ Carolyn R. Raines